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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,061	02/08/2008	David William Smyth	A-9728	5756

7590 05/22/2009  
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EXAMINER
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JONAITIS, JUSTIN M

ART UNIT	PAPER NUMBER
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3752

MAIL DATE	DELIVERY MODE
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05/22/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,061	<b>Applicant(s)</b> SMYTH, DAVID WILLIAM	
	<b>Examiner</b> JUSTIN JONAITIS	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/21/2005</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6-8 recites the limitation "locking means" in the first line of the claims. There is insufficient antecedent basis for this limitation in the claim. Specifically, Claim 6 is dependant on claim1, and 7 and 8 are dependant on claim 6. The locking means of claim 6 was not previously disclosed in claim 1.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #4,858,792 to de Laforcade in view of U.S. Patent #6,869,035 to Doud.

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In re claims 1 and 9, de Laforcade discloses an aerosol nozzle adapter for a **nozzle head (emergent outlet tube (138))**, the adapter comprising a **tube member (ejection duct (24))** having an **internal passage and a first and second tube end**, the first tube end being adapted to engage an aerosol container nozzle as to provide a continuous fluid passage therewith when connected and the second tube end adapted to direct the fluid upon expulsion and a **mounting attachment (dispensing head (3))** capable of maintaining a **tube in a supporting engagement (supported by connection to cylindrical part (31))** with an aerosol container nozzle.

However, de Laforcade does not disclose a spray nozzle having an insert portion allowing the insertion and retention of the spray nozzle into the second end of the tube, and a free end portion having a deflecting portion having a deflecting surface, shaped to provide a specific flow pattern for the fluid being expelled.

Doud discloses that it's known to provide a **spray nozzle (closure cap (16))** at the end of a tube which has a **deflecting surface (back wall of interior bore (32))** shaped to provide a specific flow pattern for the fluid being expelled from the tube, where the **free end (vertical portion with interior bore (32))** is **spaced from the second end of the tube (spaced by horizontal portion of bore (32))** to allow the fluid to exit the tube before being deflected by the deflection surface (exits the tube at the end of socket (30) before traveling down horizontap portion of bore (32)). Doud doesn't disclose the spray nozzle being inserted into the tube however teaches that it is known to combine components by inserting a component into another (teaches the tube inserting into the nozzle).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the nozzle capable of being inserted into the tube, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.

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In re claim 2, de Laforcade discloses the invention as described above including the mounting attachment facilitates the **removable attachment of the adapter in relation to an aerosol can and particularly the nozzle head (clips to flange portion of can by peripheral skirt (9) and bead (9a))** [column 5, lines 4-9].

In re claim 3, de Laforcade discloses the invention as described above including the mounting attachment comprising a **clip (peripheral skirt (9) and bead (9a))** which engages an aerosol container nozzle of the aerosol can.

In re claim 4, de Laforcade discloses the invention as described above including the mounting attachment further comprising a **tube attachment member (cylindrical part (31))** extending substantially perpendicularly from the clip, the tube attachment member provided with a means for releasably attaching the tube thereto (tube is attached in a way that the tube could be broken to detach from the adapter and glued back to the adapter for attachment)

In re claim 5, de Laforcade discloses the invention as described above including a **locking means (bead (9a))** cooperates with the peripheral groove of the can) to lock the mounting attachment in position relative to an aerosol can or nozzle head.

In re claim 6, de Laforcade discloses the invention as described above including the **locking means (push button (17) & cylindrically shaped body (19))** is movable between a **locked condition (snapped down into place, see Figure 4)** wherein the locking means is adapted to prevent removal or displacement of the mounting attachment and an **unlocked condition**

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**(flipped up in the open position as seen in figures 3 and 5)** in which the mounting attachment is removable from an aerosol can and or nozzle head.

In re claim 7, de Laforcade discloses the invention as described above including the locking means is a clip down substantially **planar locking tab (cylindrical shaped body (19) extends substantially in one plane), pivotably associated (thin film hinge (15))** with the mounting attachment, the tab provided with a **nozzle head engaging portion (widely divergent frustoconical part (21))**.

In re claim 8, de Laforcade discloses the invention as described above including the tube being provided with an external surface which functions as a marker means, enabling the user to judge the distance to the second end of the tube.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent #5,529,226 to Alberth Jr. discloses a spray nozzle attachment with similar structure and components. U.S. Patent #6,783,037 to Bonham discloses a locking aerosol spray tube with similar structure and components. U.S. Patent #6,253,971 to Cobb discloses a fluid dispensing device with similar structure. U.S. Patent #5,154,323 to Query et al. discloses a spray actuator with similar structure and components.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JUSTIN JONAITIS/

Examiner, Art Unit 3752

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752